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October 9, 1997

Mr. John H. Hankinson, Jr., Regional Administrator
U.S. EPA Region 4
100 Alabama Street
Atlanta, Georgia 30303

Dear Mr. Hankinson,

We have reviewed EPA Region 4's August 7, 1997 letter (received August 15) on the final decision regarding Kentucky's water quality standards regulations submitted to EPA on August 11, 1995. The purpose of this letter is to respond to EPA's concerns by outlining our intentions in making changes in the two areas that were disapproved and to provide additional information in the two areas in which final approval is pending. According to Section 303(c)(3) of the Clean Water Act, Kentucky should adopt revised water quality standards regulations and respond to the requests for additional information within ninety days (November 11, 1997) of receipt of EPA's letter.

The two areas of the nondegradation policy implementation methodology regulation 401 KAR 5:030 that were disapproved, subsections (3) and (5)(a)(5) of Section 1, will be reconsidered in the upcoming triennial review. As you know, the regulatory process in Kentucky does not allow us to promulgate revisions to regulations within ninety days. We should begin the next triennial review in late spring or early summer of 1998. It is our intention at that time to strengthen subsection 1(3) by including a macroinvertebrate index similar to the index of biotic integrity (IBI) now in place for fish. We consider this to be a technical issue that can be resolved by good science. We recognize that additional criteria other than the IBI need to be established to categorize "high quality" waters. Because a macroinvertebrate index for Kentucky was not fully developed, we did not attempt to include one in the 1995 nondegradation regulation. Over the next few months, we will work to complete development of a macroinvertebrate index that can be incorporated into a revised regulation. Inclusion of a macroinvertebrate index criterion for high quality waters will greatly improve the potential for more waters to be included as high quality water because the IBI has limitations in many low order streams. This should go a long way in satisfying EPA's concern that more waters should be considered for high quality status. Another recent initiative taken by the cabinet should also address this issue. Much more focused monitoring will begin next year under the watershed approach. One of the objectives of this monitoring will be the identification of relatively unimpacted waters. Over the course of the

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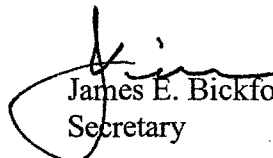
five-year watershed cycle for the state, it is likely that many high quality waters will be identified by this effort.

Subsection 1(5)(a)(5) of the regulation, also disapproved by EPA, states that carcinogens are limited in the same manner in high quality and use protected waters. With EPA's disapproval in mind, the cabinet will also take up the issue of more stringent limits for carcinogens in the upcoming triennial review.

EPA wanted further information in two related areas of Section 1. Subsection 1(5)(a)(1) could be interpreted to give specific permit limits for domestic wastewater discharges. However, the wording states that the permit limits shall be "no greater than" those concentrations (BOD5, NH3-N, TRC, TSS, TP). In other words, the limits for the constituents in that subsection are the least stringent that would be given by the cabinet. If those limits are deemed not to be protective of the high quality water, more strict limits will be assigned or the permit could be denied altogether. Region 4 should be well aware of the many instances in which we have denied discharges even in use protected waters because a use was already or potentially impaired. We will not hesitate to take measures necessary to protect high quality waters. The related issue here is that there would be insufficient socioeconomic and alternatives considerations with a strict application of the limits contained in subsection (5)(a)(1). However, with our response above to the concerns over that subsection, it should be clear that these will not be default limits in high quality waters, and that where a discharger still wishes to locate on a high quality stream when given more stringent limits, socioeconomic and alternatives issues will be considered. The practical implication of categorizing a water as high quality is that the cabinet will always seek to steer dischargers away from these waters, and dischargers will largely want to avoid them either because of more stringent permit limits or the demonstrations that must be performed to be allowed to discharge under less stringent limits.

We hope that we have responded satisfactorily to your concerns by providing sufficient additional information on the subsections for which approval is pending and by the manner in which we intend to address the disapproved subsections of the regulation. We look forward to hearing from you soon to discuss these matters further.

Sincerely,



James E. Bickford
Secretary

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